

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

JEANNIE TORRY

CASE NO.

VERSUS

JUDGE

HOME DEPOT U.S.A., INC. AND
ABC INSURANCE COMPANY

MAGISTRATE

NOTICE OF REMOVAL

Defendant, Home Depot U.S.A., Inc. (“Home Depot” or “Defendant”), hereby removes the action captioned “*Jeannie Torry versus Home Depot U.S.A., Inc.,*” bearing case number 273,161 on the docket of the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, to the United States District Court for the Western District of Louisiana, Alexandria Division. In support of this notice of removal, Defendant pleads the following grounds:

I.

This civil action was filed by plaintiff, Jeannie Torry (“Plaintiff”), on March 18, 2022, in the 9th Judicial District Court for the Parish of Rapides, State of Louisiana, bearing case number 273,161, seeking to recover damages for personal injuries allegedly related to an accident at a Home Depot store located in Alexandria, Louisiana.

II.

Plaintiff was at the time of the filing of this action a resident and domiciliary of Louisiana. *See*, Petition for Damages (“Petition”) attached hereto as Exhibit A, *in globo*, at introductory paragraph.

III.

Defendant, Home Depot, was at the time of the filing of this action, and still is, a foreign entity incorporated under the laws of Delaware, with its principal place of business in Atlanta, Georgia. *See*, Declaration of Counsel attached hereto as Exhibit B, at ¶ 8.

IV.

The Petition and Citation were served on Home Depot through its registered agent for service of process on April 5, 2022. *See*, Declaration of Counsel, Exh. B.

V.

It is not apparent on the face of the Petition that was filed in the 9th Judicial District Court for the Parish of Rapides that the action is within the original jurisdiction of this Court under the provisions of 28 U.S.C. §1332; specifically, the Petition does not show that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. *See generally*, *Petition*, Exh. A, *in globo*.

VI.

The Petition fails to describe with any degree of specificity the extent of the alleged injuries or damages sustained by Plaintiff. Rather, it is only generally alleged that Plaintiff suffered personal injuries and damages including, but not limited to, injury to her left ankle, injury to her left foot, and anxiety and depression, for which she seeks to recover damages for physical pain and suffering, past, present and future,, mental and emotional pain, anguish and distress, past, present and future loss of enjoyment of life, past present and future, impairment and disability,

disfigurement and scarring; and medical expenses, past, present and future *See, Petition*, Exh. A, *in globo*, at ¶¶ 7-8.

VII.

While it is not apparent on the face of Plaintiff's state court petition that the value of her claim exceeds the Court's jurisdictional threshold, Defendant was first put on notice that the amount in controversy exceeds \$75,000 upon receipt of Plaintiff's pre-suit settlement demand, along with certain medical records attached thereto. *See, Lowie v. Wal-Mart Louisiana, LLC*, 15-cv-2080, 2015 WL 9685508 (M.D. La. 12/1/2015) (holding that Plaintiff's pre-suit settlement demand was sufficient to meet the Defendant's burden to show by a preponderance that the amount in controversy exceeded the jurisdictional threshold at the time suit was filed and at the time of removal).

VIII.

In January 2022, Defendant received a written settlement demand for policy limits, which exceed the jurisdictional amount of \$75,000. *See*, correspondence from _____ to _____ dated January 18, 2022 ("Settlement Demand"), attached hereto as Exhibit B-1. Along with the Settlement Demand, Defendant received certain medical records showing that, following an MRI in _____, Plaintiff was diagnosed by her treating physician with multiple tears in the ligaments and tendons of her left ankle. Thereafter, Plaintiff was referred to orthopedic surgeon, Richard M. Harrell, M.D., who recommended and performed surgical repair to the tendons in Plaintiff's left ankle on October 11, 2021. *See*, Plaintiff's medical records, attached hereto Exhibit B-2, *in globo*.

IX.

Ongoing negotiations following the filing of the Plaintiff's Petition for damages reveal that Plaintiff sought damages which far exceed the jurisdiction threshold of \$75,000, as evidenced by correspondence between Defendant's third-party administrator and counsel for plaintiff, attached hereto as Exhibit B-3.

X.

Considering all of the above, this is a civil action within the original jurisdiction of this Court under the provisions of 28 U.S.C. §1332, and is thus removable to this Court pursuant to the provisions of 28 U.S.C. §1441, et seq., because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

XI.

In compliance with the requirements of 28 U.S.C. §1446(b)(1), this notice of removal is filed within thirty (30) days after Defendant was served with citation and Plaintiff's state court petition.

XII.

In compliance with 28 U.S.C §1446(a), a copy of all process, pleadings and orders served upon Home Depot to date in state court are attached as Exhibit A, in globo, and made a part hereof.

XIII.

In compliance with 28 U.S.C. §1446(d), Home Depot hereby certifies that notice of removal is being served on adverse parties, and to the Clerk of Court of the 9th Judicial District Court for the Rapides, State of Louisiana.

WHEREFORE, defendant, Home Depot U.S.A., Inc., prays that this cause be removed from the 9th Judicial District Court for the Parish of Rapides State of Louisiana, to this Honorable

Court, to proceed thereafter in the United States District Court for the Western District of Louisiana.

Respectfully submitted,

/s/ Megan S. Peterson
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing has been served upon all counsel of record by facsimile, electronic mail, by hand delivery or by placing a copy of same in the United States mail, postage prepaid and properly addressed, this 5th day of May, 2022.

/s/ Megan S. Peterson